IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

RSA NO. 178 Of 1999.

Date of decision: January 12, 2007.

State of H.P. ……. Appellants.

Vs.

Sahi Ram. ……. Respondent.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting?

For the appellants: Mr. M.S. Chandel, Advocate General with Mr.R.M. Bisht, Dy. Advocate General.

For the respondent: Mr. B.S.Chauhan, Advocate.

Surinder Singh, J (oral):

This second appeal has been directed by the State-appellants feeling aggrieved and dissatisfied by the judgment and decree passed in Civil Appeal No.09-CA/13 of 1998 on 15th May, 1998 by the District Judge, Sirmaur District at Nahan, arising from the Civil Suit No.18/1 of 1992 decided on 24.12.1996 by the Sub Judge, Rajgarh. The appeal was admitted on the following substantial question of law:-

> "What is the effect of concession given by the Advocate General in the writ petition being CWP No.575 of 1991,Sahi Ram Vs.State ?"

Whether reporters of local Papers may be allowed to see the judgment?

The brief facts necessary for deciding the above point are that the respondent Sahi Ram is the owner of Khasra No.423, measuring 19 bighas, situated in Chak Jadhol-Taproli, Teshil Rajgarh, District Sirmaur, H.P., where upon he has planted an Apple orchard. During the Construction of Dhamla-Taproli-Jadhol road, in the year 1982-83 in Rajgarh Division, 18 numbers of apple trees standing on the aforesaid land were completely damaged. Consequently, he filed a Civil Writ Petition No.575 of 1991 for the recovery of Rs.10,655/-, but the said writ was withdrawn on 10.3.1992 with liberty to file a fresh suit , as disputed question of fact arose before this Court. A Division Bench headed by the then Chief Justice passed the following order:-

> "After some arguments, Mr. Vats prays for leave to withdraw the writ petition with liberty to file a civil suit, if so advised. However, he points out that the claim will be barred by limitation.
>
> Mr. Advocate General says that the plea of limitation will not be raised as a defence provided that the suit is filed within four months from today.
>
> Leave and liberty granted. The writ petition is dismissed as withdrawn. No order as to costs."

Thereafter the respondent had instituted a suit on 22.7.1992, but in reply, the appellants took up the objection regarding the non-maintainability of the suit and *inter alia* also took up point of

limitation and on merits, it was pleaded in the written statements filed by the appellants that during the course of constructions there was no damage to the fruit plants, as alleged. The trial court framed various issues including the limitation. The parties adduced their evidence and the suit of the respondent was dismissed by the trial court on 24.12.1996. Having felt dissatisfied, the respondent approached the District Judge, Sirmaur district at Nahan and preferred an appeal against the judgment and decree passed by Sub Judge, Rajgarh.

The District Judge decided the appeal in favour of the respondent holding that in view of the order dated 10.3.1992 passed by the High Court in civil writ petition aforesaid, the suit of the plaintiff was not liable to be dismissed on this ground. As such, the appeal was allowed. Consequently, the judgment and decree passed by the trial Court was set-aside and the suit of the respondent was decreed for a sum of Rs.10,655/- against the appellants, with interest at the rate of 6% per annum, on aforesaid amount, from the date of filing of the suit, i.e. 7.7.1992, till date of payment.

The appellants have assailed the judgment and decree passed by the First Appellate Court on the grounds that the point of limitation was wrongly decided by the District Judge and no concession which

may be made by the parties against law could be entertained.

I have heard the learned Advocate General, for the appellants and Shri B.S.Chauhan, learned counsel for the respondent.

The only question which requires determination on this point is that as to what is the effect of the concession given by the Advocate General before this Court in CWP No.575 of 1991, as depicted in the order dated 10.3.1992 reproduced above. It is clear from the order aforesaid that the learned Advocate General while arguing the case had stated across the bar, obviously on instructions or in fairness from record that the plea of limitation will not be raised as a defence provided that the suit is filed within four months from the date of passing the order dated 10.3.1992 and the leave and liberty was granted by this Court. The respondent had filed the suit within four months. This is a concession made by the Advocate General on behalf of the State and the trial Court therefore was not justified in not taking in to account this submission of the Advocate General.

In ***Periyar and Pareekani Rubbers Ltd.*** Vs. ***State of Kerala*** AIR 1990 Supreme Court 2192, the Apex Court has held:

> "Any concession made by the Government pleader in the trial Court cannot bind the Government as it is obviously always unsafe to rely on the wrong or erroneous or wanton

> concession made by the counsel appearing for the State unless it is in writing on instructions from the responsible officer. Otherwise, it would place undue and needless heavy burden on the public exchequer. But the same yardstick cannot be applied when the Advocate General has made a statement across the bar since the Advocate General makes the statement with all responsibility."
>
> [Emphasis supplied]

Therefore, it was not open for the trial Court to give findings contrary to the concession given by the learned Advocate General. Therefore, in view of the above, in my opinion, the First Appellate Court has rightly decided the point of limitation in favour of the respondent and against the appellants. As such, there is no ground to interfere with the impugned judgment and decree passed by the First Appellate Court. Consequently, the appeal merits dismissal and is accordingly dismissed.

No order as to costs.

January 12,2007. (Surinder Singh)
(Pds) Judge.